

ROBERT DAVIES,
Petitioner,
v.
RICHARD CORDRAY,
Respondent.

CASE NO. 1:10 CV 993
JUDGE DONALD C. NUGENT
MEMORANDUM OF OPINION
AND ORDER

The petition reflects that Davies filed a Motion for Delayed Appeal to the Ohio Court of Appeals in 2009, which was denied as untimely. Thus, Davies was procedurally barred from raising the grounds sought to be raised herein in the state court.

Further, even absent the procedural default, the petition

is patently untimely under 28 U.S.C. § 2244(d)(1), which places a one year limit to file a habeas action after the conviction becomes final. Petitioner's 2009 Motion for Delayed Appeal - unavailing because of its untimeliness - cannot "retrigger" the statute of limitations for bringing a federal habeas action. Searcy v. Carter, 246 F.3d 515 (2001). Further, none of the other circumstances set forth in 28 U.S.C. § 2244(d)(1) is reasonably claimed to apply, and there is no suggestion of any other basis for tolling the one year statute of limitations. Therefore, the petition would have to be dismissed as time-barred in any event.¹

Accordingly, the petition is denied and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed.R.App.P. 22(b).

IT IS SO ORDERED.


DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE

¹ This court is aware of Day v. McDonough, 547 U.S. 198, 210 (2006), but does not interpret the "notice to be heard" requirement in that case as applying at the Rule 4 of the Rules Governing Section 2254 Cases screening stage of the case, when the petition is patently untimely.